

AMENDED IN ASSEMBLY APRIL 25, 2001

AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1211

Introduced by Assembly Member La Suer

February 23, 2001

An act to repeal and add Section 1203.047 of the Penal Code, relating to high technology crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1211, as amended, La Suer. High technology crimes: probation.

Existing law specifies certain circumstances where a person convicted of a high technology crime, as specified, may be granted probation. Existing law also provides that the period of probation shall not be less than 3 years.

This bill would repeal these provisions, and instead provide for the imposition of specified conditions of probation for persons convicted of crimes accomplished with the aid of a computer, computer network, electronic mail, or the Internet. This bill would require restitution to crime victims, as specified, and would make technical changes to criminal procedures involving high technology crimes. This bill would impose a laboratory analysis fee, as specified, which fee would be deposited into the High Technology Laboratory Trust Fund as established by this bill.

By increasing the costs to local governments for increased probation periods, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds that rapid technological
2 change has provided new means of committing certain crimes and
3 created new offenses. Although the Legislature has passed laws
4 defining that illegal conduct, it is equally important to provide
5 courts and probation officers with tools they can use to discourage
6 recidivism, foster rehabilitation, and protect the public. The
7 current Section 1203.047 provides a blunt instrument to achieve
8 these objections for a small segment of high-technology offenders.
9 This act repeals that statute and replaces it with a more
10 comprehensive scheme.

11 This act requires courts, as part of imposing terms of probation,
12 to prohibit defendants from engaging in various acts and practices
13 during their probation period. Some of the acts prohibited by this
14 act, including concealing the source of electronic
15 communications, communicating in real-time over the Internet, as
16 in “chat,” and the use of encryption, are targeted because the acts
17 enable new offenses or the concealment of same. Still other
18 provisions, including limiting the business activities of computer
19 intruders, serve to steer offenders away from activities associated
20 with their offenses that may predispose them to repeat their crimes
21 or provide them with the tools and information they need to do so.
22 Business activities may also interfere with offenders’
23 rehabilitation and reintegration into the community by appearing
24 to reward them for their crimes and discouraging them from
25 seeking other gainful employment. Some of the disclosures
26 required by this act, including requiring defendants convicted of
27 auction fraud to reveal their convictions when selling items on the
28 Internet, will protect the public and make it more difficult for
29 offenders to commit new crimes. Each of the restrictions on an



1 offender's activities and the compelled disclosure of certain facts
2 are necessary to achieve the purposes set forth above.

3 The Legislature also recognizes that the investigation and
4 prosecution of these crimes exacts an unusually heavy toll on
5 victims and law enforcement. Victims may need to halt their
6 business activities to preserve evidence and secure their computers
7 from further intrusion. Victims may lose customers and business
8 opportunities, be required to compensate third parties, and suffer
9 other losses not directly connected with the offense. This act
10 requires offenders to make restitution for direct and indirect losses
11 alike. Law enforcement may incur tens of thousands of dollars in
12 costs to locate, seize, preserve, analyze, and present computer
13 evidence. This legislation imposes laboratory analysis fee to be
14 deposited into the High Technology Laboratory Trust Fund to be
15 administered by the Office of Criminal Justice Planning.

16 SEC. 2. Section 1203.047 of the Penal Code is repealed.

17 SEC. 3. Section 1203.047 is added to the Penal Code, to read:

18 1203.047. (a) (1) This section applies where probation is
19 granted to a defendant convicted of a violation of Section 502,
20 502.7, 593d, or 593e. It also applies to a conviction of Section
21 288.2, 311.1, 311.2, 311.3, 311.4, 311.11, 313.1, 350, 422, 474,
22 475, 476, 484e, 484g, 529, 529.5, 530.5, 535, or 646.9, where the
23 crime was accomplished with the aid of a computer, computer
24 network, electronic mail, or the Internet.

25 (b) The term of probation shall be not less than 36 months *for*
26 *any felony violation of this section.*

27 (c) The defendant shall make full restitution to the victim for
28 all losses as otherwise provided for by law. In calculating those
29 losses, the court shall include all indirect and direct economic loss
30 suffered by the victim, including, but not limited to, lost profits,
31 costs reasonably incurred by the victim of storing evidence in a
32 commercial storage facility, costs reasonably incurred by the
33 victim or others to restore or repair computers and computer
34 networks damaged or otherwise altered or impaired as a result of
35 the offense, and losses reasonably incurred by the victim in
36 compensating, paying damages to, or indemnifying third parties
37 based on losses caused by the offense.

38 (d) The court may impose terms of probation that reasonably
39 restrict the use by the defendant of technology that the defendant
40 used to commit the offense.

1 (e) The court shall impose the following terms of probation,
2 *unless upon a showing of good cause the court finds the term of*
3 *probation to be inappropriate:*

4 (1) If the defendant is convicted of violating Section 422, 529,
5 or 646.9 or any other felony violation where the defendant
6 concealed the source, destination, or content of an electronic
7 communication in committing or aiding in the commission of the
8 offense:

9 (A) The defendant shall not intentionally conceal the source,
10 destination, or content of any electronic communication
11 transmitted or otherwise sent by the defendant.

12 (B) The defendant shall not provide false information about his
13 or her identity to any provider of an “electronic communications
14 service” as defined under paragraph (15) of Section 2510 of Title
15 18 of the United States Code when purchasing, subscribing to, or
16 agreeing to purchase or subscribe to any service from that provider
17 that allows the defendant to send or receive electronic
18 communications.

19 (C) The defendant shall disclose to the defendant’s probation
20 officer all electronic mail accounts, all Internet accounts, and any
21 other means of access to any computer or computer network, all
22 passwords and access codes. The defendant shall consent to the
23 search of that electronic mail and Internet accounts at any time and
24 the seizure of any information or data contained therein without a
25 search warrant or probable cause.

26 (2) If the defendant is convicted of any offense involving fraud
27 in the sale or offering for sale of any item via the Internet,
28 including, but not limited to, any violation of Section 535
29 involving the Internet:

30 (A) In any advertisement, notice, or offer for sale or purchase
31 displayed by the defendant on the Internet, the defendant shall
32 prominently disclose his or her true identity, including residence
33 address and telephone number, along with the fact that the
34 defendant is on probation for having committed that offense.

35 (B) The defendant shall not intentionally conceal the source,
36 destination, or content of any electronic communication
37 transmitted or otherwise sent by the defendant.

38 (C) The defendant shall not provide false information about his
39 or her identity to any provider of an “electronic communications
40 service” as defined under paragraph (15) of Section 2510 of Title

1 18 of the United States Code when purchasing, subscribing to, or
2 agreeing to purchase or subscribe to any service from that provider
3 that allows the defendant to send or receive electronic
4 communications.

5 (D) The defendant shall disclose to the defendant's probation
6 officer all electronic mail accounts, all Internet accounts, and any
7 other means of access to any computer or computer network, all
8 passwords and access codes. The defendant shall consent to the
9 search of that electronic mail and Internet accounts at any time and
10 the seizure of any information or data contained therein without a
11 search warrant or probable cause.

12 (3) If the defendant is convicted of violating Section 502 or
13 502.7:

14 (A) The defendant shall not do any of the following:

15 (i) Provide computer or information security services to the
16 public, including securing or testing the security of computers or
17 computer networks, for compensation.

18 (ii) Disclose or provide information about the security of
19 computers or computer networks to others for compensation.

20 (iii) Deliver presentations concerning the security of
21 computers or computer networks to the public or others for
22 compensation.

23 (iv) Possess software used primarily to gain unauthorized
24 access to computers or computer networks or to ascertain means
25 of gaining that unauthorized access.

26 (v) Possess software designed to encrypt data or electronic
27 communications except as allowed by the court after notice to the
28 prosecution and a hearing.

29 (B) The defendant shall not intentionally conceal the source,
30 destination, or content of any electronic communication
31 transmitted or otherwise sent by the defendant.

32 (C) The defendant shall not provide false information about his
33 or her identity to any provider of an "electronic communications
34 service" as defined under paragraph (15) of Section 2510 of Title
35 18 of the United States Code when purchasing, subscribing to, or
36 agreeing to purchase or subscribe to any service from that provider
37 that allows the defendant to send or receive electronic
38 communications.

39 (D) The defendant shall disclose to the defendant's probation
40 officer all electronic mail accounts, all Internet accounts, and any

1 other means of access to any computer or computer network, all
2 passwords and access codes. The defendant shall consent to the
3 search of that electronic mail and Internet accounts at any time and
4 the seizure of any information or data contained therein without a
5 search warrant or probable cause.

6 (4) If the defendant is convicted of violating Section 350, the
7 defendant shall not:

8 (A) Infringe copyrights for software or intentionally aid in the
9 infringement of those copyrights by others.

10 (B) Engage in the sale or distribution of software except upon
11 court approval after notice and hearing.

12 (5) If the defendant is convicted of violating Section 593d or
13 ~~593e~~ 593e:

14 (A) The defendant shall not possess an e-prom burner.

15 (B) The defendant shall not possess software designed to
16 facilitate the programming of cable e-prom chips or satellite access
17 cards.

18 (C) The defendant shall not possess any addressable
19 multichannel video or information device, as defined in
20 subdivision (b) of Section 593d, not assigned to the defendant's
21 residence by the multichannel video or information provider, as
22 defined in subdivision (i) of Section 593g. The defendant shall not
23 possess more than one direct broadcast satellite system access card
24 per satellite system receiver allowed under this subdivision.

25 (6) If the defendant is convicted of violating Section 288.2,
26 311.1, 311.2, 311.3, 311.4, 311.11 or 313.1, and the violation was
27 accomplished with the aid of a computer, computer network,
28 electronic mail, or the Internet:

29 (A) The defendant shall not intentionally conceal the source,
30 destination, or content of any electronic communication
31 transmitted or otherwise sent by the defendant.

32 (B) The defendant shall not knowingly engage in any real-time
33 communication over the Internet with anyone who identifies
34 himself or herself as a minor or anyone whom the defendant knows
35 to be a minor, including "chat" and "instant messaging" forms of
36 communication, unless the court or the probation department has
37 allowed the defendant to communicate with that minor. This
38 provision does not prohibit the use of electronic mail.

39 (C) The defendant shall not knowingly engage in any
40 communication over the Internet, including by electronic mail,



1 with anyone concerning the current or planned possession,
2 production, preparation, publication, exchange, exhibition, or
3 distribution by the defendant or any party to that communication
4 of any matter depicting a person under 18 years of age personally
5 engaging in or personally simulating sexual conduct as defined in
6 Section 311.4.

7 (D) The defendant shall participate in a counseling program
8 relating to the commission of the offense by that defendant.

9 (E) The defendant shall not provide false information about his
10 or her identity to any provider of an “electronic communications
11 service” as defined under paragraph (15) of Section 2510 of Title
12 18 of the United States Code when purchasing, subscribing to, or
13 agreeing to purchase or subscribe to any service from that provider
14 that allows the defendant to send or receive electronic
15 communications.

16 (F) The defendant shall disclose to the defendant’s probation
17 officer all electronic mail accounts, all Internet accounts, and any
18 other means of access to any computer or computer network, all
19 passwords and access codes. The defendant shall consent to the
20 search of that electronic mail and Internet accounts at any time and
21 the seizure of any information or data contained therein without a
22 search warrant or probable cause.

23 (G) The defendant shall not possess software designed to
24 encrypt data or electronic communications except as allowed by
25 the court after notice to the prosecution and a hearing.

26 (7) If the defendant is convicted of a violation of Section 474,
27 475, 476, 484e, 484g, 529, 529.5, or 530.5, and the violation was
28 accomplished with the aid of a computer, computer network,
29 electronic mail, or the Internet:

30 (A) The defendant shall not possess software designed for
31 manufacturing checks or blank check paper.

32 (B) The defendant shall not possess a scanner or digital camera.

33 (C) The defendant shall not possess an access card reader or an
34 access card encoder.

35 (D) The defendant shall obtain approval from the probation
36 department prior to accepting any employment that includes the
37 legitimate acquisition of personal identifying information.

38 (E) The defendant shall not intentionally conceal the source,
39 destination, or content of any electronic communication
40 transmitted or otherwise sent by the defendant.

1 (F) The defendant shall not provide false information about his
2 or her identity to any provider of an “electronic communications
3 service” as defined under paragraph (15) of Section 2510 of Title
4 18 of the United States Code when purchasing, subscribing to, or
5 agreeing to purchase or subscribe to any service from that provider
6 that allows the defendant to send or receive electronic
7 communications.

8 (G) The defendant shall disclose to the defendant’s probation
9 officer all electronic mail accounts, all Internet accounts, and any
10 other means of access to any computer or computer network, all
11 passwords and access codes. The defendant shall consent to the
12 search of that electronic mail and Internet accounts at any time and
13 the seizure of any information or data contained therein without a
14 search warrant or probable cause.

15 (f) (1) The High Technology Laboratory Trust Fund is hereby
16 created as a special account within the General Fund, to be
17 administered by the Office of Criminal Justice Planning. Money
18 in the fund shall, upon appropriation by the Legislature, be used
19 for the purposes of defraying the costs incurred for computer
20 forensic analysis or other analysis of electronic or computer
21 evidence related to investigating and prosecuting high-technology
22 offenses, as those offenses are specified in subdivision (h).

23 (2) In addition to any other fine, restitution fine or order of
24 restitution, the court shall order payment by the defendant
25 convicted of an offense described in subdivision (a) of a minimum
26 forensic computer laboratory analysis fee, *if an analysis was*
27 *conducted in the case*, for the reasonable costs incurred for
28 computer forensic analysis or other analysis of electronic or
29 computer evidence, not to exceed twenty-five thousand dollars
30 (\$25,000) per case, including cases where the defendant is not
31 convicted of a felony but is convicted of a misdemeanor. The court
32 may reduce or waive this fee upon a finding that the defendant does
33 not have the ability to pay that fee. The moneys deposited with the
34 county treasurer pursuant to this section shall be transferred to the
35 Controller for deposit in the High Technology Laboratory Trust
36 Fund. This fee shall not be assessed unless the request for the fee
37 is included in an indictment or in an information or other
38 accusatory pleading filed before trial.

39 (g) If the defendant is convicted of a high-technology related
40 offense not otherwise specified in this section and the offense is

1 designated as high-technology related offense in an indictment or
2 in an information or other accusatory pleading filed before trial,
3 the court shall impose as a term of probation, the fee specified in
4 subdivision (f), and may impose terms of probation that
5 reasonably restrict the use by the defendant of technology that the
6 defendant used to commit the offense.

7 (h) For purposes of this section, a “high-technology related
8 offense” is an offense committed with the aid of a computer,
9 computer network, electronic mail, or the Internet.

10 (i) For purposes of this section, the terms “computer system”
11 and “computer network” are to be construed as they are defined
12 in Section 502.

13 SEC. 4. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.

